IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

WEDNESDAY, THE 12TH SEPTEMBER 2007 / 21ST BHADRA 1929

AS.No. 733 of 1997()

OS.213/1993 of PRINCIPAL SUB COURT,KOLLAM
.....

APPELLANT: PLAINTIFF:

S.K.ARAVIND, S/O.VIKRAMAN PILLAI, PADMA BHAVAN,
PUNNATHALA CHERRY KOLLAM VILLAGE.

BY ADV. SRI.P.R.VENKITESH

RESPONDENTS: DEFENDANT:

PRABHAVATHY DEVI, D/O.PADMAVATHY AMMA,
PADMABHAVAN, PUNNATHALA CHERRY, KOLLAM VILLAGE.

BY ADV. SRI.B.KRISHNA MANI
SRI.K.SUBASH CHANDRA BOSE
SRI.V.PREMCHAND

THIS APPEAL SUITS HAVING COME UP FOR ADMISSION ON 12/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.PADMANABHAN NAIR, J.

A.S.No. 733 of 1997

Dated this the 12th September, 2007.

J U D G M E N T

The plaintiff in O.S.No.213/1993, on the file of the Principal Sub Court, Kollam, is the appellant. Respondent is the sister of the appellant. They entered into an agreement by which the respondent had agreed to sell the suit property to the plaintiff for a consideration of Rs.80,000/= on 9.9.1991. The period of one year was fixed for execution of sale deed. The sale deed was not executed. On 5.3.1993, appellant issued a notice calling upon the respondent to execute the sale deed. She refused. Hence, the suit.

2. The main contention raised was that the time was the essence of the contract, and there was failure on the part of the plaintiff to perform his part of the contract. According to the plaintiff, the defendant had agreed to measure out the property and produced documents to show that there was encumbrance, as rightly observed by the court below. Plaintiff himself had no case that there was any encumbrance and boundaries of the properties were not cleared. The court below had found that PW.1 in his cross examination had

admitted that he was not having the money for execution of the sale deed, and that was the reason, why the sale deed was not executed. From the materials available on record, the trial court found that there was laches on the part of the appellant and he had no money with him. The court below also found that it was not a fit case in which discretion can be granted. I do not find any reason to interfere with the decree and judgment passed by the court below. There is no merit in this appeal and it is only to be dismissed under Order XLI Rule 11 of Civil Procedure Code.

In the result, the appeal is dismissed.

K.PADMANABHAN NAIR,
JUDGE

nj.

K.PADMANABHAN NAIR, J.

A.S.No. 733 of 1997

J U D G M E N T

Dated:12th September, 2007.